

REMARKS

This application has been amended so as to place it in condition for allowance at the time of the next Official Action.

At the outset, applicants note that this amendment is made in a reissue application. Accordingly, the form of the amendment is not dictated by 37 CFR §1.121, but rather by 37 CFR §1.173. Moreover, MPEP Section 1453 provides both a narrative description of the proper form for amendments in a reissue application as well as helpful examples.

The status of each claim and where the current form of each claim can be found are as follows:

1. pending (amendment of May 31, 2005);
2. pending (unchanged from issued patent);
- 3-5. pending (amendment of May 31, 2005);
- 6-12. pending (original patent)
13. pending (amendment of May 31, 2005);
14. pending (present amendment);
15. canceled (amendment of June 20, 2007);
- 16, 17. pending (amendment of May 31, 2005);
- 18-20. pending (amendment of July 30, 2003);
- 21, 22. pending (amendment of February 8, 2006);
- 23, 24. pending (amendment of July 30, 2003);
25. pending (amendment of February 8, 2006);
- 26-28. pending (amendment of July 30, 2003);
- 29, 30. pending (amendment of May 31, 2005);

31. pending (present amendment);

32-35. pending (amendment of June 20, 2007).

The present amendment modifies each of claims 14 and 31. In accordance with the rules defining amendments in reissue applications, each of these claims is shown completely underlined, as neither of these claims was present in the patent whose reissue is now sought.

Applicants note that claims 14 and 31 are modified by the addition of features related to the head of the bone-anchoring elements and its relationship with the associated ball. These features are supported at least by the drawings of the issued patent, in particular FIGS. 1, 2, 20, and 12.

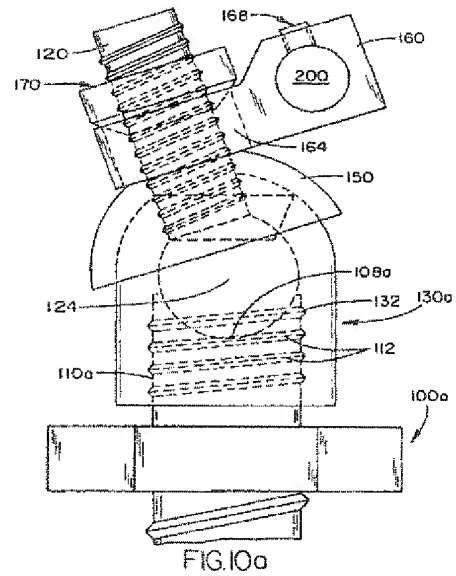
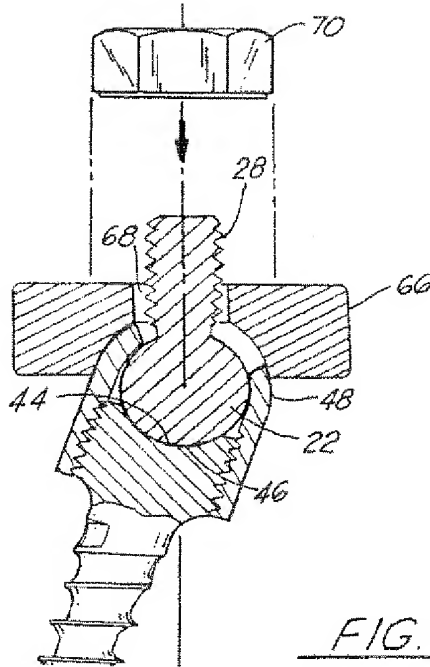
The Official Action rejects claims 14, 22, and 31-35 under 35 USC §103(a) as being unpatentable over BERNHARDT et al. in view of RHINEVAULT. Reconsideration and withdrawal of this rejection are respectfully requested for the following reasons:

At the outset, applicants note that the RHINEVAULT document is an extraordinarily old reference and describes subject matter utterly distinct from that of the present device as recited. In this regard, the very age of the document serves to indicate that, while the general teachings of such reference have been known for scores of years, it has nevertheless fallen upon the present inventors to arrive at the recited device. This supports the non-obviousness of the device as claimed.

The Official Action acknowledges that the combination of the BERNHARDT et al. and RHINEVAULT references fails to teach a head shaped so as to allow grasping with a screwing tool and wherein the interior surface is continuous throughout an entirety of the recess. While the introduction of the present rejection makes no mention of a third reference, the narrative portion of the rejection refers to ERRICO et al. in support of the rejection. It is such ERRICO et al. reference that is offered as teaching the features admittedly absent from BERNHARDT et al. and RHINEVAULT.

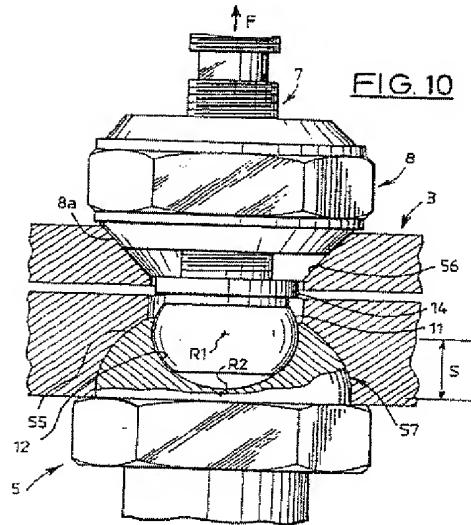
Applicants respectfully suggest, however, that the ERRICO et al. reference offers nothing that was not already present in the prior art of record. In both principle and implementation, the ERRICO et al. device closely mirrors that of BERNHARDT et al. The Official Action draws particular attention to FIGS 4a and 4b of ERRICO et al. The structure of such reference is also entirely present in FIG. 10a of the same reference. Moreover, FIG. 10a further includes the additional hardware that mates with that of FIGS. 4a and 4b.

Comparing FIG 10a of ERRICO et al. with FIG. 5 of BERNHARDT et al. demonstrates the striking similarity between the structure of the two references.



In both BERNHARDT et al. and ERRICO, there is necessarily a discontinuity on the interior surface, as such surface is made up of the union of two very distinct elements that are screwed together to capture a ball therebetween.

This feature is no doubt present in numerous other prior art references. It is, however, fundamentally at odds with the device as now recited in independent claims 14 and 31, and as illustrated in present FIG. 10, reproduced below.



The present device as claimed and illustrated incorporates a unique combination of features absent from the known prior art, considered independently or collectively. Such combination includes, at least:

- the head has both hemispherical interior and exterior surfaces;

- the interior surface and the exterior surface are continuous on a periphery or widest portion of the recess;

- the interior and exterior surfaces extend beyond the periphery on a side opposite a bottom of the recess, defining a continuous wall therebetween;

- the wall protrudes on the side opposite a bottom of the recess, and the wall extends around the ball and in an immediate vicinity of the ball;

- the wall tapers and terminates in a free edge defining the opening;

- the opening has a diameter that is less than a diameter of the ball; and

- the bottom of the recess lies on one side of an equator of the ball, a part of the ball around which the free edge extends lies on an opposite side of the equator of the ball.

Neither any one reference nor any meaningful combination of such references offers this combination of features. For at least this reason, applicants respectfully suggest that the present obviousness rejection of independent claims 14 and 31 cannot stand. By extension, the rejection of the claims that depend therefrom similarly cannot stand.

In light of the amendments provided above and the arguments offered in support thereof, applicants believe that the present application is in condition for allowance and an early indication of the same is respectfully requested.

If the Examiner has any questions or requires further clarification of any of the above points, the Examiner may contact the undersigned attorney so that this application may continue to be expeditiously advanced.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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EJ/ej

APPENDIX:

The Appendix includes the following item(s):

☒ - Indication of Claim Amendments